

**Illinois Department of Revenue
Regulations**

Title 86 Part 695 Section 695.115 Jurisdictional Questions

**TITLE 86: REVENUE
PART 695
COUNTY MOTOR FUEL TAX**

Section 695.115 Jurisdictional Questions

a) County Defined

When used in this Part, "county" means any one of the counties of DuPage, Kane or McHenry authorized under the County Motor Fuel Tax Law [55 ILCS 5/5-1035.1] to impose a County Motor Fuel Tax.

b) Mere Solicitation of Orders Not Doing Business

- 1) For a seller to incur County Motor Fuel Tax liability in a given county, the sale must be made in the course of such seller's engaging in the retail business within such county. In other words, enough of the selling activity must occur within the county to justify concluding that the seller is engaged in business within the county with respect to that sale.
- 2) For example, the Supreme Court has held the mere solicitation and receipt of orders within a taxing jurisdiction (the State), where such orders were subject to acceptance outside the taxing jurisdiction and title passed outside such jurisdiction, with the goods being shipped from outside such jurisdiction to the purchaser in such jurisdiction, did not constitute engaging in the business of selling within such jurisdiction. This conclusion was reached independently of any question of interstate commerce and so would apply to the county as the taxing jurisdiction as much as to the State as the taxing jurisdiction.

c) Seller's Acceptance of Order

- 1) Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the county or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of subsections (g) and (h) of this Section, or if a purchase order that is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the county or by someone working out of such place of business, the seller incurs County Motor Fuel Tax liability in that county if the sale is at retail and the purchaser receives the physical possession

of the motor fuel in Illinois. The Department will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary.

- 2) If a purchase order is accepted outside the county, but the motor fuel that is sold is in an inventory of the retailer located within the county at the time of its sale (or is subsequently produced in the county), then delivered in Illinois to the purchaser, the place where the motor fuel is located at the time of the sale (or subsequent production in the county) will determine where the seller is engaged in business for County Motor Fuel Tax purposes with respect to such sale.

d) Some Considerations that are Not Controlling

- 1) Delivery of the motor fuel within the county to the purchaser is not necessary for the seller to incur County Motor Fuel Tax liability. It is sufficient that the purchaser receives the physical possession of the motor fuel somewhere in Illinois as far as the question of delivery is concerned. This is true because there is no exemption for intercounty commerce comparable to the exemption arising from interstate commerce, and it is not necessary for delivery to be completed within the county for the seller to be regarded as being engaged in the business of selling within such county with respect to that sale.
- 2) The point at which the motor fuel will be used or consumed and the place at which the purchaser resides are also immaterial in determining whether the seller incurs County Motor Fuel Tax liability. Furthermore, the place at which the technical sale occurs (i.e., the place at which title passes) is not a decisive consideration since the phrase "in the county" in the County Motor Fuel Tax Law refers only to the location of the occupation of selling that is being taxed and not to the place where sales may be made. (See *Standard Oil Company vs. Department of Finance et al.*, 383 Ill. 136 (1943), for a similar problem under the Illinois Retailers' Occupation Tax Act.)

e) Place of Business Where Long Term or Blanket Contracts are Involved

Under a long term blanket or master contract that (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for County Motor Fuel Tax purposes with respect to such orders.

f) Sales from Vehicles Carrying Uncommitted Stock of Goods

The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously accepted orders, but actual sales and deliveries) from a vehicle in which motor fuel is being carried for sale is the place at which such sales and deliveries happen to be made -- the vehicle carrying such motor fuel.